Select Agreement Number

NOT FOR USE WITH THE MICROSOFT BUSINESS AGREEMENT

MICROSOFT STATE AND LOCAL GOVERNMENT SELECT AGREEMENT
(Reseller Version)

This MICROSOFT STATE AND LOCAL GOVERNMENT SELECT AGREEMENT is entered into between the following entities as of the effective date identified below. If different from the main contact information, any notices must be addressed to the contact and locations outlined in the notices section below. We will notify you in writing if our address information changes. You must notify us and Microsoft in writing if your address changes.

Customer Name	Name and address of Reseller
Street Address and/or post office box	Street Address and/or post office box
City and State / Province	City and State / Province
Country and Postal Code	Country and Postal Code
Contact Name	Contact Name
Phone Number	Phone Number
Fax Number	Fax Number
Email Address	Email Address
For the Attention of:	For the Attention of:
Customer Notices Information (if different from above) Customer Name	*The agreement, attached documents and All NOTICES should be sent to:* MSLI, GP 6100 Neil Road, Suite 210 Reno, NV 89511-1137 Attention: Volume Licensing, Dept. 551 Phone: 775-823-5600 Email Address: Selquest@microsoft.com
Street Address and/or post office box	
City and State / Province	*All NOTICES should have Copy To:* Microsoft Corporation, Law and Corporate Affairs One Microsoft Way Redmond, WA USA 98052 Attention: Volume Licensing Attorney Phone: 425-936-7329 Email Address: @Microsoft.com
Country and Postal Code	
Contact Name	
Phone Number	
Fax Number	
Email Address	
For the Attention of:	

This agreement consists of (1) this cover page, (2) the License Purchase Forecast Form, (3) the attached terms and conditions, (4) the Product List, (5) the product use rights applicable to products licensed under this agreement, and (6) any enrollment entered into under this agreement. By signing below, you represent that the information you provide on each of the attached forms is accurate.

Name of Customer (Entity Name):	**Name of Reseller:**
By:	By:
(Signature)	*(Signature)*
Name:	Name:
(Printed)	*(Printed)*
Title:	Title:
(Printed)	*(Printed)*
Date:	Effective Date:

LICENSE PURCHASE FORECAST FORM

Part 1: Select Price Level/Forecast Designation:

In order to determine your initial Select price level, you must select one of the options described below. Note: when we refer to Enterprise Enrollment, we mean either an Enterprise Enrollment or an Enterprise Select Agreement.

If neither you nor an affiliate is party to an existing Enterprise Enrollment (nor is entering into an Enterprise Enrollment concurrently with this agreement), then you must use Option 1. Under Option 1, you must provide a good faith forecast of the number of points you will acquire during the term of this agreement. Your forecasted purchases will be checked against your actual purchases each year and your pricing may be adjusted going forward to account for any discrepancy.

If you or an affiliate is party to an existing Enterprise Enrollment (or is entering into an Enterprise Enrollment concurrently with this agreement), then you may use Option 1 or Option 2. If you choose to use Option 2, then for all enterprise products covered by the Enterprise Enrollment you will use the desktop count to establish your Select price level for corresponding product pools rather than a forecast. You must still provide a forecast for any pools you choose (in Option 2, section 3) which are not covered by the Enterprise Enrollment. The price levels for the pools covered by the Enterprise Enrollment will not be adjusted during the term of the Enterprise Enrollment, but price levels based on your forecast may be adjusted based on actual purchases each year.

You may only check _**one**_ of the below options.

☐   **Option 1.** You _must_ use this option if neither you nor an affiliate is party to an existing Enterprise Enrollment (nor is entering into an Enterprise Enrollment concurrently with this agreement).

You forecast that during the term of this agreement you and your affiliates will acquire at least the number of points circled below from the corresponding product pool. You do not need to acquire products from all pools. Each product is assigned the number of points specified in the Product List.

Minimum Points for Price Level		Application Pool (Circle one if applicable)	System Pool (Circle one if applicable)	Server Pool (Circle one if applicable)
A	1,000	A	A	A
B	8,000	B	B	B
C	20,000	C	C	C
D	50,000	D	D	D

If you have selected Option 1, you may proceed to Part 2, "Up-front Payment Option"

☐   **Option 2.** You _may_ use this option if either you or an affiliate is party to an existing Enterprise Enrollment (or is entering into an Enterprise Enrollment concurrently with this agreement).

Please enter the Enterprise Enrollment information below. (If you or an affiliate is entering into an Enterprise Enrollment concurrently with this agreement, Microsoft will assign the number.) **[Please Note: If you (or your affiliates) are party to more than one Enterprise Enrollment, you may only identify and receive credit for your purchases under a single Enterprise Enrollment.]**

Company Name	Enterprise Enrollment Agreement Number	Expiration Date

Please fill in the appropriate boxes in Section 1 below to indicate the enterprise products covered by the Enterprise Enrollment and indicate the qualified desktop count. For those pools applicable to the enterpris e products covered by the Enterprise Enrollment, please use the table in Section 2 below to determine the appropriate corresponding Select price level for that product pool. You must provide a forecast in Section 3 below for purchases in all other pools not included in the above referenced Enterprise Enrollment and these forecasted pools may receive a price level adjustment during the term of this agreement.

LICENSE PURCHASE FORECAST FORM

Section 1: Use this chart to determine the applicable Select product pool(s) and price level(s) for the enterprise products covered by the Enterprise Enrollment. The chart in Section 2 below will assist you in determining your Select price level(s). These pools _will not_ receive a price level adjustment during the term of the Enterprise Enrollment.

i.   If you or an affiliate selected the Enterprise Desktop Professional Platform on the Enterprise Enrollment, please fill in the table below by entering the number of qualified desktops and the corresponding Select price level from Section 2 below. **You do not have to fill out Section 3 below.**

Enterprise Product	?	Applicable Select Pool	Number of Qualified Desktops	Select price level *selected from the chart in Section 2 below
Enterprise Desktop Professional Platform		All 3 Select Pools		

If you or an affiliate selected one or two of the enterprise products listed in the below table on the Enterprise Enrollment, please fill in the table below by entering the number of qualified desktops and the corresponding Select price level from Section 2 below for each enterprise product selected. **You must fill out Section 3 below for the product pools not covered by the Enterprise Enrollment.**

Enterprise Product	?	Applicable Select Pool	Number of Qualified Desktops	Select price level *selected from the chart in Section 2 below
Office Professional		Application Pool		
Windows Desktop Operating System Upgrade		Systems Pool		
BackOffice Client Access Licenses		Server Pool		

Section 2. The Select price level for the pools applicable to the enterprise products will be based on the table below for the number of qualified desktops you entered above.

Number of Desktops	Application Pool	System Pool	Server Pool
500 to 3,999	A	A	A
4,000 to 9,999	B	B	B
10,000 to 24,999	C	C	C
25,000 and above	D	D	D

Section 3: For any pool not covered by the Enterprise Enrollment, you must make your forecast for the term of this agreement by circling the appropriate point level for that pool below. The price levels for these pools _may_ be adjusted during the term of this agreement.

Minimum Points for Price Level		Application Pool (Circle one if applicable)	System Pool (Circle one if applicable)	Server Pool (Circle one if applicable)
A	1,000	A	A	A
B	8,000	B	B	B
C	20,000	C	C	C
D	50,000	D	D	D

Part 2: Up-front Payment Option. If you are level A or B in one or more chosen pools identified in Part 1, you qualify to receive a discount on the first order submitted with the first enrollment under this agreement. To obtain this discount, the enrolled affiliate must order from us at the time this agreement and initial enrollment are signed, a minimum of 1000 points (if it is a Level A customer) or 8000 points (if it is a level B customer) within the product pool for which they want the discount to apply.

You must place an "X" in the appropriate box below if you or an enrolled affiliate is participating in the "Up-front Payment Option" for the designated pool:

Application Pool ☐ **System Pool** ☐ **Server Pool** ☐

MICROSOFT STATE AND LOCAL GOVERNMENT SELECT AGREEMENT

TERMS AND CONDITIONS

1.   Definitions. In this agreement, "you" means the entity that has entered into this agreement with the reseller, and "we" or "us" means the reseller which has signed this agreement. The term "Microsoft" refers to Microsoft Corporation or any of its affiliates that are legal entities that own Microsoft Corporation, are owned by Microsoft Corporation or are under common ownership with Microsoft Corporation. In addition, the following definitions apply:

"affiliates" means with regard to you, any government agency, department, instrumentality, division, unit or other office that is supervised by or is part of you, or which supervises you or of which you are a part; together with, as mandated by law, any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality located within your jurisdiction and geographic boundaries, provided that a state and its affiliates shall not, for purposes of this definition, be considered to be affiliates of the federal government and its affiliates;

"enrolled affiliate" means either you or any of your affiliates, that has entered into an enrollment under this agreement;

"enrollment" means the document that you or your affiliate submits to us before orders can be placed under this agreement;

"license confirmation" means the evidence of license provided by Microsoft or by one of its affiliates;

"product" means any product available to you for license under this agreement, as described on the Product List;

"Product List" means, with respect to any licensing program, the statement published by Microsoft from time to time which identifies the products available under the Select program and any product-specific conditions or limitations on the acquisition of licenses for the product;

"reseller" means us or any other Large Account Reseller authorized by Microsoft or one of its affiliates to resell licenses in an enrolled affiliate's area under this program; and

"run" or "use" means to copy, install, use, access, display, run or otherwise interact with.

2.   Select license program. Upon entering into this agreement, you and your affiliates may submit enrollments that allow enrolled affiliates to license certain products at volume price levels. Enrolled affiliates can sublicense to affiliates which do not enter into an enrollment, in order to allow them to share the benefits of this agreement. Enrolled affiliates may not acquire licenses under this agreement for the use or benefit of any person or entity other than affiliates. Each enrollment will expire on the expiration or earlier termination of this agreement.

a. Products. You or an enrolled affiliate may order licenses for any products available for government select licensing at the time of your order, in any pool or pools that you have chosen. The Product List provides information on Microsoft products available for licensing under this program, information on point values, product pools, product upgrade or license qualification criteria, and additional product information. New versions of the Product List will be made available to you and enrolled affiliates. You may order standard or upgrade licenses where applicable. You may order an upgrade license only if you already have and retain a qualifying license. If you order a product for which the price is payable in installments, you are obligated to make all installment payments in full at the time the order is placed, with no option to defer all or part of such payments.

b. Price levels. The price level assigned for each product pool is based on your total forecast of license acquisitions in that pool as indicated on the License Purchase Forecast Form. You may make your own forecast, or if you or an affiliate is party to an Enterprise Enrollment (or is entering into an Enterprise Enrollment concurrently with this agreement), you may choose to have your price level for that pool established based on the size of the enterprise included in that agreement.

c. Terms of use. You and any affiliate may run the products for which an enrolled affiliate orders corresponding licenses in a timely manner. In place of a copy of the version licensed, you and your affiliates may run a copy of any prior version of the same product, subject to the product use rights applicable to the version licensed. Use of any product that you license from Microsoft is governed by product use rights specific to each product and version and by the terms of this agreement. The product use rights applicable to any version of any product released on or before the date of an enrollment will be the product use rights in effect on the enrollment date for that product and version. The product use rights applicable to a version or product released after the date of an enrollment will be the product use rights for that version or product in effect on the date of commercial release under the Select License program. In place of a copy of the language version licensed, you and your affiliates may run a copy of any other language version, provided that the language version you or your affiliate wish to run is available under Microsoft Select at the same or a lower price compared to the product and language on the issue date identified in the license confirmation. In lieu of your obligation to indemnify Microsoft under various provisions of the product use rights, you agree that you will be completely responsible for any costs and damages arising from any claim or action to which your indemnity obligation would otherwise apply.

We will provide you with a copy of the applicable product use rights, or will make them available to you either by Microsoft's publication of the product use rights on the World Wide Web at a site we identify to you or by some other reasonable means. You acknowledge that you have access to the World Wide Web. Neither we nor Microsoft transfers any ownership rights in any licensed product and we and Microsoft reserve all rights not expressly granted.

d. License confirmations. Once an enrolled affiliate has received a license confirmation, the listed licenses (but not rights, if any, to future releases of products) become perpetual, as long as the products are used only as permitted by this agreement and the product use rights. Microsoft will issue license confirmations covering all licenses ordered. Microsoft may issue license confirmations either via post, express courier, facsimile, or Internet display. The license confirmations are evidence of license. Product support is not included with the licenses under this agreement.

e. Transfers of licenses. Once an enrolled affiliate has received a license confirmation, it may transfer the licenses identified on the license confirmation to an affiliate. For all other transfers of licenses, Microsoft's written consent is required. Microsoft will not withhold its consent unreasonably.

In order to transfer licenses, an enrolled affiliate must physically transfer the relevant license confirmations. If transferring only some of the licenses listed on the license confirmation, the enrolled affiliate must record the transfer on the face of the license confirmation and provide a photocopy of the revised license confirmation to the entity to which the licenses are being transferred. In addition, no license transfer will be valid unless the entity to which the licenses are being transferred accepts in writing the applicable product use rights, use restrictions and limitations of liability. Upgrade Advantage subscription rights may not be transferred to, or used for the benefit of, a third party other than an affiliate. Licenses cannot be transferred on a short-term basis.

An enrolled affiliate may transfer an upgrade license for an operating system product licensed under this agreement only as part of the sale or transfer of the computer system on which the product was first installed.

Any transfer made in violation of the requirements or restrictions of this section will be void.

f. Resellers. We will act as the reseller for all enrolled affiliates. If at any time during the term of this agreement you wish to terminate the relationship with us and choose a different reseller for all enrolled affiliates, or if Microsoft discontinues our authority to resell licenses under this program, you must choose a replacement. To change your reseller, you must notify us and Microsoft of the proposed change in writing, on a form that Microsoft provides, at least thirty (30) days prior to the date on which the change is to take effect. No change in reseller will be effective unless and until the new reseller has agreed in writing to assume this agreement and to release us from any obligation or liability under it. You will be completely responsible for all costs and damages arising out of any change of reseller initiated by you.

3.   Ordering licenses. Starting on the effective date of each enrollment, the enrolled affiliate may order licenses from us. A license must be ordered in the month in which the copy of a product is first run from a particular computer or similar device. Your order must specify version number, language and country of usage for each license. Price and payment terms for all licenses ordered are determined by separate agreement with us.

4.   Restrictions on use. You may not:

- ?? Separate the components of a product made up of multiple components by running them on different computers, by upgrading or downgrading them at different times, or by transferring them separately, except as otherwise provided in the product use rights;

- ?? Rent, lease or lend or host products, except where we agree by separate agreement;

- ?? Reverse engineer, de-compile or disassemble products, except to the extent expressly permitted by applicable law despite this limitation;

- ?? Transfer licenses to, or sublicense, products to the U.S. Government.

You acknowledge that products licensed under this arrangement are of US-origin. You agree to comply with all applicable international and national laws that apply to these products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information on exporting Microsoft products, see http://www.microsoft.com/exporting/.

5.   Price level adjustments. Every year, on the anniversary of this agreement, Microsoft will review your license acquisitions within each pool for which you provided a forecast. Your price level going forward will be increased, decreased or remain the same based on that review. For the first review Microsoft will double your 12-month acquisition history to determine whether your level will be reset. For any pool for which your price level was established based upon an Enterprise Enrollment, your price level will not be reset for the term of the Enterprise Enrollment.

If your license acquisitions from a pool fall below the minimum point count for the A price level, you and your affiliates will no longer be able to acquire licenses from that pool under this agreement.

6.   Making copies of software. Each enrolled affiliate may make as many copies of the products licensed under its enrollment as necessary to distribute the products to its users. All copies must be true and complete copies (including copyright and trademark notices)

and be made from CD-ROMs, disk sets or a network source acquired from or made available by a Microsoft approved fulfillment source. Each enrolled affiliate may also have a third party make and distribute or pre-install copies on computer hardware in its place, but the enrolled affiliate is responsible for third party actions to the same extent it would be if the third party were its employee.

You and your affiliates must make reasonable efforts to make employees, agents and other individuals running a product aware that the product is licensed from Microsoft and may only be run or transferred subject to the terms of this agreement. In addition, each enrolled affiliate has the right to (i) run up to 20 copies of any product in a dedicated training facility on its premises; (ii) run up to 10 copies of any product for a 60-day evaluation period; and (iii) make and retain one copy of any licensed product for back-up or archival purposes for each of its distinct geographic locations.

7.   Confidentiality. The terms and conditions of this agreement shall be disclosed only in accordance with the requirements of your public records law and regulations, if any. In the absence of such law and regulations, the terms and conditions of this agreement are confidential. Neither you, we, or Microsoft will disclose such terms and conditions, or the substance of any discussions that led to them, to any third party other than your, our or Microsoft's affiliates or agents, or prospective resellers who: (i) have a need to know such information in order to assist in carrying out this agreement; and (ii) have been instructed by you, us, or Microsoft that all such information is to be handled in strict confidence. Notwithstanding the foregoing, we will disclose the terms and conditions of this agreement to Microsoft and its affiliates.

8.   Warranties and other obligations of Microsoft.

a. Limited product warranty. Microsoft, in its capacity as licensor of the products acquired under this agreement, warrants that each version of a product will perform substantially in accordance with the applicable user documentation. This warranty is valid for a period of 90 days from the date you first run a copy of the version. Any warranties imposed by law concerning the products are limited to the same 90-day period. This warranty does not apply to components of products which you are permitted to redistribute under applicable product use rights, or if failure of the product has resulted from accident, abuse or misapplication. If you notify us within the warranty period that a product does not meet this warranty, then we will, at Microsoft's option, either (i) return the price paid for the product or (ii) repair or replace the product. This is your exclusive remedy for any failure of any product to function as described in this paragraph.

b. Year 2000 warranty. For purposes of this section, "Year 2000 Warranted Product" means the specific version of each product identified in the Product Guide on the effective date of this agreement, by version number and language, as "compliant," and any new products (including new versions of products) released after the effective date, and "Product Guide" means the Microsoft Year 2000 Product Guide located on the Microsoft Year 2000 Resource Center web page (www.microsoft.com/technet/year2k/product/product.asp). Microsoft, in its capacity as licensor of the products acquired under this agreement, warrants that each Year 2000 Warranted Product, when run with accurate date data and in accordance with its documentation and the recommendations and exceptions set forth in the Product Guide, will recognize the year 2000 as a leap year and will not produce material errors processing date data in connection with the year change from 1999 to 2000, as long as, and only to the extent that, all other information technology used in combination with such Year 2000 Warranted Product (e.g., software, firmware, hardware) properly exchanges date data with it. This warranty does not extend or apply to user customizable features or third party add-on features or products, including items such as macros and custom programming or formatting features. Except as provided in the next sentence, if you or an enrolled affiliate reports to Microsoft on or before June 1, 2000 that a product does not meet this warranty, Microsoft will: (i) exercise commercially reasonable efforts to correct any material non-compliance which is generally reported by other users; and (ii) provide any resulting correction, without charge, when it is made available generally. The June 1, 2000 date will be extended to January 1, 2001 for the following products and future versions thereof: Windows NT Workstation 4.0 & 3.51, Windows 98 & 95, Windows NT Server 4.0 & 3.51, SQL Server 6.5 & 7.0, Microsoft Exchange 5.5, Site Server 3.0; SNA Server 4.0, Systems Management Server 1.2, Proxy Server 2.0, Internet Information Server 4.0, Office 97 & 95 (Microsoft Word, Excel, Access, Outlook, PowerPoint), Works 4.0-4.5a, Visual C++ 6.0, Visual Basic 6.0, Visual Fox Pro 6.0, Visual J++ 6.0 and Visual SourceSafe 6.0. This is the exclusive remedy for any failure of a product to function as described in this section, or for any other Year 2000-related failure of a product.

c. <u>NO OTHER WARRANTIES</u>. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE AND MICROSOFT DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS OR RELATED MATERIALS. NEITHER WE NOR MICROSOFT WILL BE LIABLE FOR ANY SERVICES OR PRODUCTS PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED OR REFERRED TO YOU BY US OR MICROSOFT UNLESS SUCH THIRD PARTY PRODUCTS OR SERVICES ARE PROVIDED UNDER WRITTEN AGREEMENT BETWEEN YOU AND US OR MICROSOFT, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN SUCH AGREEMENT.

9.   Defense of infringement claim. Microsoft, in its capacity as licensor of the products acquired under this agreement, will defend you against any claim by an unaffiliated third party that any product infringes its patent or copyright, and will pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents). You must notify Microsoft promptly in writing of the claim and give Microsoft sole control over its defense or settlement. You agree to provide Microsoft with reasonable assistance in defending the claim, and Microsoft will reimburse you for reasonable out of pocket expenses that you incur in providing that assistance.

Microsoft's obligations will not apply to the extent that the claim or adverse final judgment is based on (i) your running of the product after we or Microsoft notify you to discontinue running due to such a claim; (ii) your combining the product with a non-Microsoft product, data or business process; (iii) use of, or access to, the product by any person or entity other than an employee of you or one of your affiliates; or (iv) your altering the product. You will be completely responsible for any costs or damages that result from these actions.

If Microsoft receives information concerning an infringement claim related to a product, Microsoft may, at its expense and without obligation to do so, either (i) procure for you the right to continue to run the allegedly infringing product, or (ii) modify the product or replace it with a functional equivalent, to make it non-infringing, in which case you will stop running the allegedly infringing product immediately. If, as a result of an infringement claim, your use of a product is enjoined by a court of competent jurisdiction, Microsoft will use commercially reasonable efforts to either procure the right to continue its use, replace it with a functional equivalent, or modify it to make it non-infringing.

If any other type of third party claim is brought against you regarding Microsoft's intellectual property, you must notify us and Microsoft promptly in writing. Microsoft may, at its option, choose to treat these claims as being covered by this section.

10.   Limitation of liability.

a. Limitation.   There may be situations in which you have a right to claim damages or payment from us or from Microsoft. Except as otherwise specifically provided in this paragraph, whatever the legal basis for your claim, the liability of us or Microsoft will be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount you have paid for the product giving rise to the claim. In the case of Microsoft's responsibilities with respect to third party patent or copyright infringement claims, its obligation to defend such claims will not be subject to the preceding limitation, but its liability to pay damages resulting from any final adjudication (or settlement to which Microsoft consents) will be. In the case of free product or code you are authorized to redistribute to third parties without separate payment to Microsoft or us, our and Microsoft's total liability to you will not exceed US$5000. The limitations contained in this paragraph will not apply with respect to our or Microsoft's obligations under Section 7 (confidentiality).

b. No liability for certain damages.   To the maximum extent permitted by applicable law, neither Microsoft nor either party nor any of their affiliates or suppliers will be liable for any indirect damages (including, without limitation, consequential, special or incidental damages, damages for loss of profits or revenues, business interruption, or loss of business information) arising in connection with this agreement or any product or service, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. This exclusion of liability does not apply to either party's or Microsoft's liability to the other or to Microsoft for violation of its confidentiality obligation or of the other party's or Microsoft's intellectual property rights.

c. Application.   The limitations on and exclusions of liability for damages in this agreement apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

11.   Verifying compliance.   You must keep records relating to the products you and any affiliate run. Microsoft has the right to verify compliance, at its expense, during the term of this agreement or any enrollment and for a period of one year thereafter. To do so, Microsoft will engage an independent accountant from a nationally recognized public accounting firm, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 15 days notice, during normal business hours and in a manner that does not interfere unreasonably with your operations. As an alternative, Microsoft may require you to accurately complete a self-audit questionnaire relating to the products you and any affiliates use. If verification or self-audit reveals unlicensed use of products, you must promptly order sufficient licenses to permit all product usage disclosed. If material unlicensed use is found (license shortage of 5% or more), you must reimburse Microsoft for the costs it has incurred in verification and acquire the necessary additional licenses as single retail licenses within 30 days. If Microsoft undertakes such verification and does not find material unlicensed use of products, it will not undertake another verification of the same entity for at least one year. Microsoft and its auditors will use the information obtained in compliance verification only to enforce its or our rights and to determine whether you are in compliance with the terms of this agreement. By invoking the rights and procedures described above, neither we nor Microsoft waive its rights to enforce this agreement or to protect our or Microsoft's intellectual property by any other means permitted by law.

12.   Term and termination.

a. Term.   This agreement will remain in effect for 24 full calendar months following the effective date.

b. Termination.   Either party to an enrollment may terminate it for cause. If we terminate an enrollment for cause, we may also terminate this agreement and all other enrollments under it. Except where the cause for termination is by its nature not curable (or not curable within 30 days), the terminating party will give 30 days notice and opportunity to cure. If we give such notice to an enrolled affiliate, we will give you and Microsoft a copy of that notice as well. If an enrolled affiliate ceases to be your affiliate you must notify us and Microsoft of this fact, and we may terminate its enrollment. Unless terminated for cause, an enrollment will expire or terminate upon the expiration or termination of this agreement.

You agree that neither you nor any of your affiliates will reproduce any software unless sufficient funds have been duly appropriated. Notwithstanding any deferred payment schedule for upgrade licenses that may be available to non-governmental customers, you agree that, due to the uncertainty of future appropriations, any payments for upgrade licenses ordered in connection with this agreement shall be made in full at the time the order is placed, with no option to defer all or part of such payments.

Upon expiration or termination of this agreement or any enrollment, the enrolled affiliate must order licenses for all copies of products it has run for which it has not submitted orders. Termination of this agreement will not affect your or your affiliates' right to run copies of products for which the enrolled affiliate already ordered licenses.

12. Miscellaneous.

a. Notices. All notices, authorizations, and requests given or made in connection with this agreement must be sent by post, express courier, facsimile, or email to the addresses and numbers indicated in the applicable cover page to this agreement. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or email confirmation of delivery.

b. Assignment. This agreement may be assigned (i) by either party only to an affiliate, or (ii) by us to Microsoft or any of its affiliates, or (iii) by us to any authorized reseller in connection with a change in reseller under Section 2.f of this agreement; but in cases (i) and (ii) above assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement or any enrollment, it must notify the other party and Microsoft of the assignment in writing.

c. Severability. If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend the agreement to give effect to the stricken clause to the maximum extent possible.

d. Waiver. No waiver of any breach of this agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

e. Force Majeure. To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.

f. Note on Java Support. The products may contain support for programs written in Java. Java technology is not fault tolerant and is not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of Java technology could lead directly to death, personal injury, or severe physical or environmental damage. *Sun Microsystems, Inc. has contractually obligated Microsoft to make this disclaimer.*

g. Limitations on actions. Except for any different period required by applicable law, any action arising under this agreement must be brought within two years from the date that the cause of action arose.

h. Entire agreement. The documents identified on the cover page to this agreement constitute the entire agreement concerning the subject matter hereof, and supersede any prior or contemporaneous communications. The terms of these documents shall control in the following order: (i) this State and Local Government Select Agreement; (ii) the product use rights; (iii) the Product List; and (iv) any and all enrollments under this agreement. The terms of any purchase order or any general terms and conditions you or your affiliates maintain, other than those mandatory terms required by statute or regulation, do not apply. This agreement (except the product use rights and the Product List) can be changed only by an amendment signed by both parties.

i. Survival. Licenses identified in license confirmations and provisions regarding warranties, limitations of liability, confidentiality, compliance verification, third party beneficiary and obligations on termination or expiration will survive termination or expiration of this agreement or any enrollment.

j. Independent contractors. We are an independent contractor acting in our own name and for our own account, and have no authority to bind or impose any obligation or liability upon Microsoft.

k. Third-party beneficiary. Microsoft shall be a third-party beneficiary of this agreement entitled to the benefits of, and to enforce, the rights and limitations applicable to it hereunder.

l. Applicable law; Disputes. This agreement shall be interpreted in accordance with and governed by the laws of your State, without giving effect to its conflicts of law provisions. This choice of law does not prevent either party or Microsoft as third party beneficiary from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction. Disputes relating to this agreement will be subject to applicable dispute resolution statutes and regulations of your state, if any.

m. Copyright Violation. Except to the extent you are licensed under this agreement, you shall be responsible for your violation of Microsoft's copyright in the products, including payment of license fees specified in this agreement for unlicensed use.